

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES SISTRUNK,

Defendant-Appellant.

UNPUBLISHED

January 27, 2005

No. 249494

Wayne Circuit Court

LC No. 03-002377

Before: Meter, P.J., and Wilder and Schuette, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, second offense, MCL 769.10, to concurrent prison terms of six to ten years for the assault conviction and three to five years for the felon in possession conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Viewed in a light most favorable to the prosecution, the assault victim's testimony was sufficient to identify defendant as a perpetrator of the charged offenses beyond a reasonable doubt. The credibility of the victim's identification testimony was a matter for the jury to decide, and this Court will not resolve it anew. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

We also reject defendant's challenge to the trial court's decision to score fifty points for offense variable 7 of the sentencing guidelines. Although MCL 777.37, as amended by 2002 PA 137, removed the term "terrorism" from subsection (1)(a), it retained the substance of the former "terrorism" definition by expressly including "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." The victim's trial testimony that defendant pointed a gun at him while threatening to "pop" and "shoot" him supports the trial court's finding that defendant engaged in conduct designed to substantially increase the fear and anxiety the victim suffered during the offense. Therefore, the court did not err in scoring fifty points for OV 7. *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003); cf. *People v Hornsby*, 251 Mich App 462, 468-469; 650 NW2d 700 (2002).

Affirmed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette